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City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. 88932 C.M.S.

INTRODUCED BY VICE MAYOR KAPLAN

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### RESOLUTION OF THE CITY OF OAKLAND CITY COUNCIL REQUESTING STATE CANNABIS CULTIVATION TAX REFORM

**WHEREAS**, California voters passed Proposition 64 in 2016, establishing two commercial cannabis taxes that, effective January 1, 2018, imposed an excise tax upon the retail sale of cannabis or cannabis products at a rate of fifteen percent (15%), and a cultivation tax on all harvested cannabis that enters the commercial market at a rate of nine dollars and twenty-five cents (\$9.25) for dry-weight flower per ounce, and two dollars and seventy-five cents (\$2.75) per dry-weight leaves/trim per ounce; and

**WHEREAS**, the City of Oakland embraced legalization and established a regulatory framework to permit commercial cannabis businesses, including cultivation, has been burdened by the onerous nature of State regulations, rapidly expanding illicit cultivation, and the economic instability of the legal market has impacted the jurisdiction's ability to provide other core mandated services; and

**WHEREAS**, Proposition 64 required that the Bureau of Cannabis Control convene a committee to advise the licensing authorities on the development of standards and regulations, including best practices and guidelines that protect public health and safety while ensuring commercial cannabis regulations do not impose barriers that perpetuate, rather than reduce and eliminate, the illicit market for cannabis. This committee came to be known as the Cannabis Advisory Committee (CAC); and

**WHEREAS**, in 2018, and again in 2019, the California Legislature considered, but did not approve, bills to temporarily eliminate the cultivation tax. California State Treasurer Fiona Ma, sponsor of Assembly Bill 286 (Bonta, 2019) argued that "given that we now have seen a year of severe under-collection of expected tax revenue and that the black market still exists, it is understood that excessive taxation is an obstacle to establish a fully viable legal market. Compliant businesses are at a significant disadvantage, and this high tax rate incentivizes businesses to stay underground." Treasurer Ma characterized the bill as "imperative to temporarily lessen California's total tax on cannabis and give these businesses and the State enough time to fully implement Prop 64."; and

**WHEREAS**, in 2019, Harinder Kapur, Senior Assistant Attorney General, testified to the California Legislature stating that upwards of 80 percent of California's cannabis businesses remained in the illicit market; and

**WHEREAS**, in November 2019, the California Department of Tax and Fee Administration announced that effective January 1, 2020, per statutory mandate, the cultivation tax would increase to account for inflation leading the CAC to express concern in its 2019 Annual Report that the increase in taxation would, "...come[s] at a time when the complex regulatory framework, coupled with high taxation, pose[s] significant challenges to the licensed cannabis market," noting a report published by Arcview Market Research, that these two factors could disadvantage the licensed market by as much as 77 percent on pricing compared to well-established illicit market operations; and

**WHEREAS**, in 2020, the Legislature again considered a bill to eliminate the cultivation tax, but, due to emergency orders and economic uncertainty caused by the COVID-19 pandemic, held the bill in Committee, and instead approved Assembly Bill 1872 (Committee on Budget, Chapter 93, Statutes of 2020) which suspended for one year the California Department of Tax and Fee Administration's authority to adjust the cannabis cultivation tax for inflation; and

**WHEREAS**, on November 17, 2021, the California Department of Tax and Fee Administration announced that effective January 1, 2022, the cultivation tax would increase from nine dollars and sixty-five cents (\$9.65) to ten dollars and eight cents (\$10.08) for flower per dry-weight ounce; from two dollars and eighty-seven cents (\$2.87) to three dollars (\$3.00) for leaves/trim per dry-weight ounce; and, from one dollar and thirty-five cents (\$1.35) to one dollar and forty-one cents (\$1.41) for fresh cannabis plant per ounce; and

**WHEREAS**, a November 2021 sales report from BDS Analytics shows that legal sales in California fell by more than eleven percent (11.4%) to \$293.1 million when compared to last year and are down nearly eight percent (7.7%) from August 2021, additionally showing that cannabis flower sales fell twenty-three percent (23%), while concentrates, the second-largest product category, declined eight percent (8%); and

**WHEREAS**, the licensed cannabis market is currently experiencing a price collapse and that the average wholesale price for dried cannabis flower has fallen to approximately five hundred dollars (\$500) a pound, and that the average wholesale price for dry leaves and trim has fallen to thirty dollars (\$30) a pound making the current tax rate for dry flower equivalent to fifty-one percent (51%) of gross receipts and the current tax rate for dry leaves and trim equivalent to one hundred fifty-three percent (153%) of gross receipts; and

**WHEREAS**, the ongoing consequences of high state taxes combined with over-regulation has continued to economically challenge legal cannabis businesses and disincentivize the permitting and licensing of new cannabis businesses by local jurisdictions, including the City of Oakland; and

**WHEREAS**, local jurisdictions, including the City of Oakland, have experienced increased challenges collecting cultivation taxes, regulating commercial cannabis cultivators, and addressing illicit cultivation; and

**WHEREAS**, on November 8, 2016, Proposition 64 was enacted by a vote of the People to, "...accomplish [...] taxation on the growth and sale of cannabis in a way that drives out the illicit market for marijuana and discourages use by minors, and abuse by adults"; now, therefore, be it


**RESOLVED:** That the Oakland City Council strongly urges Governor Newsom and the California Legislature to immediately eliminate the cultivation tax and to establish a regulated environment for commercial cannabis activities that do not impose such barriers as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis.

IN COUNCIL, OAKLAND, CALIFORNIA,

**DEC 07 2021**

PASSED BY THE FOLLOWING VOTE:

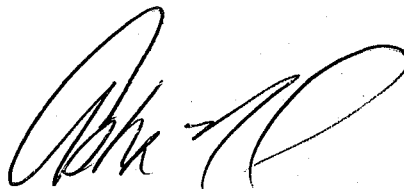
AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS 

NOES - 

ABSENT - 

ABSTENTION - 

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the  
City of Oakland, California